

**REMARKS**

The comments of the Examiner as set forth in the office action of May 30, 2006 have been carefully studied and reviewed. In this response, claim 1 has been amended. For the reasons set forth below it is respectfully urged that the claims in the present application are in condition for allowance.

**Section 35 USC §112 Rejection**

Claim 1 stands rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner concludes that:

"may be connected" is indefinite as it confuses the scope of the claim. The claim is thus indefinite.

Applicants respectfully disagree that "may be connected" is indefinite. The language is clear on its face, and a person of ordinary skill in the art would be able to determine the meaning and scope of the claim. However, notwithstanding this clarity, to advance the prosecution of this case the claim has been amended to substitute "is connected" for "may be connected." This amendment is not made for purposes of patentability and does not change the scope of the claim.

**Section 35 USC §102 Rejection Based on Vukmanic, U.S. Patent No. 4,677,802**

Claims 1-3, 11, 21-24, 34-38 are rejected under 35 USC §102(b) as being anticipated by Vukmanic.

The Examiner has misconstrued the terms "stud" and "stud spacer." The Examiner has construed these claim terms so broadly that the construction encompasses runners and cross members in a suspended ceiling system. That construction is unreasonable. It is inconsistent with the ordinary meaning of "stud." It is inconsistent with Applicants' specification and how the

terms “stud” and “stud spacer” are used therein. Further, the construction given these terms by the Examiner is not in harmony with how a person of ordinary skill in the art would construe the terms.

The first step in a Section 102 analysis is claim construction. All claim terms that are in dispute must be construed. There is no doubt that Applicants and the Examiner differ on the proper construction of the claim terms “stud” and “stud spacer.” Applicants acknowledge that the Examiner can give a claim term its broadest reasonable construction. However, the Patent Office must be mindful that the rule requires the construction to be reasonable. Ordinarily, a reasonable construction of a disputed claim term must be consistent with the ordinary meaning of the term, especially in terms of how the disputed claim term is used in Applicants’ specification. If the construction is inconsistent with the ordinary meaning of a claim term, and how the claim term is used in the specification, then the construction is unreasonable and wrong as a matter of law. In this case, the Examiner’s construction of “stud” is inconsistent with both the ordinary meaning and how the term is used in Applicants’ specification.

Regarding the ordinary meaning of the term “stud”, the McGraw-Hill Dictionary of Scientific and Technical Terms defines “stud” as follows:

One of the vertical members in the walls of a frame building to which wallboards, lathing, or paneling is nailed or fastened.

See Exhibit 1.

Certainly, this definition of “stud” is consistent with how Applicants have used the term in their specification. A person of ordinary skill in the art would likewise view the term “stud” as referring to a vertical member in a wall structure.

The same McGraw-Hill Dictionary of Scientific and Technical Terms defines “spacer” as:

A device for holding two members at a given distance from each other.

See Exhibit 2.

Thus, the term "stud spacer" is a structural member interposed between studs for holding the studs at a given distance from each other. This construction is consistent with Applicants' specification and how a person of ordinary skill in the art would construe the term.

Vukmanic does not disclose a stud or a stud spacer. Indeed, Vukmanic does not even show or discuss a wall structure. Instead, Vukmanic discloses a ceiling suspension system that includes main runners 11 and cross runners 12 for supporting ceiling tiles. The Examiner maintains that the runners 11 are studs, and that cross runners 12 in the ceiling system constitutes stud spacers. That is contrary to the proper construction of "stud" and "stud spacer." A ceiling structure is not a wall, and structural components of a ceiling structure can never be deemed studs or stud spacers.

All of Applicants' claims are restricted to a stud spacer for extending between studs. Claim 1, for example, recites the term "stud spacer" in both the preamble and body of the claim. Hence, Applicants' claims cannot be anticipated by a reference that does not disclose studs or stud spacers.

As the foregoing indicates, it is unclear how the Examiner construes the terms "stud" and "stud spacers." All that is known is whatever the construction is, it encompasses components of suspended ceiling tile systems. To enable Applicants to address the Examiner's claim construction, the Examiner is requested to explicitly set forth his claim construction for both terms, "stud" and "stud spacer."

### **35 USC §102 Rejection Based on Kovar, U.S. Patent No. 4,246,736**

Claims 1-8 are rejected under 35 USC §102(b) as being anticipated by Kovar.

In order to anticipate a claim, a single piece of prior art must show every element and limitation of the claim. Kovar, contrary to the Examiner's finding, does not show each and every

limitation of the claim. In claim 1 for example, the following limitation, as amended herein, provides:

Wherein one stud spacer is connected to another stud spacer by extending the projection of the one stud spacer through the opening within one stud into the opening of another stud spacer.

Here, claim 1 calls for a projection from one stud spacer to extend through one stud opening into another stud spacer. In Kovar, there is no connection between cross braces, and there are of course no openings in the joists. Accordingly, no part of the brace extends through an opening in a joist. Since the braces of Kovar are not interconnected, and since Kovar does not employ projections that project through stud openings to interconnect with braces, it follows that Kovar cannot anticipate the claims.

#### **Double Patenting**

The double patenting concern appears to be premature at this time. However, if there is a bonified double patenting issue in the future, Applicants are amenable to filing a terminal disclaimer.

For the foregoing reasons, its is respectfully urged that the claims in the present application are in condition for allowance and allowance is respectfully requested.

Respectfully submitted,

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Dated: July 14, 2006

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